THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23476 OF 2006

Dated 24th APRIIL, 2007

BETWEEN:

S.A.Kalesha and others

… Petitioners

And

Valmikipuram Gram Panchayat, Valmikipuram, Chittoor District rep. By Panchayat Secretary, and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23476 OF 2006

ORDER:

Valmikipuram Gram Panchayat among others owns mini shopping complex in the village. These shops were let out to the petitioners on monthly rent ranging from Rs.275 to Rs.975. They have been continuing as lessees since 1987. In 1995, the lease was extended on enhancement of rentals by 20%. In 1999, petitioners filed W.P.No.6816 of 1999 apprehending coercive dispossession. On 04.12.2002, this Court disposed of the writ petition observing that respondents have to follow due process for eviction of petitioner from the tenanted premises. By reason of orders of stay granted is the said writ petition, petitioners continued. On 11.10.2006, they represented to Gram Panchayat requesting extension. In response thereto, first respondent allegedly took an undertaking from the petitioners to enhance the rent by 40% over the existing land. In spite of the same, petitioners allege that, "it is apprehended that in spite of undertaking, respondent will forcibly evict the petitioners". Therefore, they filed the instant writ petition.

The counter affidavit is filed by second respondent, namely, District Panchayat Officer. Smt.N.Bhagyalakshmi, who was elected as Sarpanch in 2006 filed an application being W.P.M.P.No.30929 of 2006 to get impleaded in writ petition. The same was ordered on 23.11.2006. She also filed W.V.M.P.No.2372 of 2006 seeking vacation of interim order passed by this Court on 10.11.2006 along with counter affidavit. Therefore, the matter was heard finally at the admission stage.

Second respondent opposed the writ petition alleging that petitioners were continued as lessees in 1987, that after disposal of writ petition by this Court being W.P.No.6816 of 1999 auction notice was issued to conduct public auction to lease out the shops for three years from 01.10.2003 to 30.09.2006 and that all the petitioners participated in auction accepting the conditions of auction. Therefore, petitioners cannot rely on resumption orders passed by this Court, as they did not challenge the auction or auction notification.

The impleaded third respondent filed a detailed counter affidavit. It is stated that after obtaining permission of the Divisional Panchayat Officer, Madanapalle, a resolution was passed to conduct auction. The public auction is meant to facilitate all the public interested to participate in the auction in the interest of the Gram Panchayat. The petitioners have no right, and therefore, writ petition is not maintainable.

Learned counsel for petitioners submits that even if the petitioners continued to be in possession after expiry of lease, the Gram Panchayat cannot resort to highhanded eviction and they have to necessarily follow due process of law. According to learned counsel, they have to file a suit for eviction or take such other steps under law. He placed reliance on a decision of Supreme Court in **State of UP v Maharaja Dharmander Prasad Singh**[1]. Learned Assistant Government Pleader for Panchayat and learned counsel for Sarpanch, relied on the same Judgment and submitted that when there is termination of tenancy/lease by efflux of time, petitioners have to seek remedy elsewhere and they cannot file writ petition under Article 226 of Constitution of India.

The admitted fact is that all the petitioners were inducted as lessees in 1987 after conducting auction. It is also admitted that in 1995 and 1999, they approached this Court and obtained orders of stay alleging that there was a threat of dispossession. It is also admitted that but for the orders of stay granted in 1995 and 1999 by this Court, in the usual course, petitioners ought to have vacated the premises on their own volition. Petitioners are bound by the terms of

lease, and therefore, they cannot be allowed to contend in these proceedings under Article 226 of Constitution of India that in spite of expiry of lease, they are entitled to enforce the lease. There is no gainsaying to say that a writ petition is intended to enforce a constitutional right, common law right or statutory right. The writ petition is also intended to compel public authority to discharge the duty under law. When a person has no legal right, it cannot be enforced (See **Director of Settlements, A.P., v M.R.Appa Rao**[2]**)**.

The petitioners admittedly have no valid lease in their favour. Can they enforce such nebulous non-existent right in the writ petition? The answer should be in the negative. I n **M.C.Chockalingam v V.Manickavasagam**[3], Supreme Court considered the concept of 'lawful possession', possession by a non-statutory tenant or licensee. It was held.

> …a tenant on the expiry of the lease cannot be said to continue in 'lawful possession' of the property against the wishes of the landlord if such a possession is not otherwise statutorily protected under the law against even lawful eviction through court process, such as under the Rent Control Act. Section 6 of the Specific Relief Act does not offer such protection, but only, as stated earlier, forbids forcible dispossession, even with the best of title.

Yet again, it was held.

> … the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified by 'lawful' in the first part of Rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious

possession and must have some foundation in a legal right to possess the property, which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it.

In view of the above legal position, petitioners cannot seek a writ of Mandamus as prayed, the remedy lies elsewhere if they apprehend that there is likely to be forcible dispossession. A reference may also be made to **State of UP v Maharaja Dharmander Prasad Singh** (supra), wherein Supreme Court held as under.

> On a consideration of the matter, we think, in the facts and circumstances of this case, t**he High Court should have abstained from the examination of the legality or correctness of the purported cancellation of the lease which involved resolution of disputes on questions of fact as well.** In **Express Newspapers v Union of India**[4], Venkataramiah, J. in a somewhat analogous situation observed:
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> > The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. Those questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited. Whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an Officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.
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> **Accordingly, we hold that the question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed to be agitated in proceedings under Article 226.**
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> (emphasis supplied)

This legal position is not seriously disputed by learned counsel for petitioners and therefore, the writ petition is dismissed. No costs.

(V.V.S.RAO,J)

24.04.2007.
pln

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[1] AIR 1989 SC 997

[2] (2002) 4 SCC 638 = AIR 2002 SC 1598

[3] AIR 1974 SC 104

[4] AIR 1986 SC 872